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No. 84-582

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

SPYRIDON KOLLIAS,

Petitioner,

—against—

BAY TANKERS, INC. and KINGSWAY TANKERS, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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8 pp

TABLE OF CONTENTS

PAGE

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 2

I. The Decision Below is in Accord with the Decision of This Court 4

CONCLUSION 5

TABLE OF AUTHORITIES

Cases:

Braen v. *Pfeifer Oil Transp. Co.*, 361 U.S. 129, 80 S.Ct. 247, 4 L.Ed. 2d 191 (1959) 5

Norton v. *Warner Co.*, 321 U.S. 565, 64 S.Ct. 747, 88 L.Ed. 931 (1944) 4

Senko v. *LaCrosse Dredging Corp.*, 352 U.S. 370, 77 S.Ct. 415, 1 L.Ed. 2d 404, (1957) 5

South Chicago Coal & Dock Co. v. *Bassett*, 309 U.S. 251, 60 S.Ct. 599, 84 L.Ed. 732 (1940) 4

Swanson v. *Marra Bros. Inc.*, 328 U.S. 1, 66 S.Ct. 869, 90 L.Ed. 1045 (1946) 4

Texas Co. v. *Gianfala*, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775 (1955) memo *per curiam* reversing 222 F. 2d 382 (5 Cir. 1955) 5

Statutes:

Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424 now Title 33 U.S.C. §901 *et seq.* 2, 3

Title 33 U.S.C. §905(b) 1, 2, 3

Jones Act, Title 46 U.S.C. §688 ..... 1, 2, 3

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Statement of the Case

This litigation concerns an action by a ship repairman to recover damages for injuries allegedly sustained in the course of repairing ship's equipment while the vessel was on the high seas. In his action, petitioner sought damages under the Jones Act, 46 U.S.C. 688, and the general maritime law. It was his contention that the repair work had been performed under the direction and supervision of the ship's officers as a result of which petitioner became an employee of the shipowner, and that he was a crewmember and not a repairman because the repairs and work incident, thereto, contributed to the function and welfare of the vessel.

The T.T. WILLIAMSBURG, the vessel on which petitioner's accident occurred, was a super tanker engaged in the carriage of crude oil. On the voyage last preceding petitioner's coming aboard the WILLIAMSBURG had encountered heavy weather and sustained damage to some of its equipment which included the equipment which petitioner was engaged in repairing at the time of his accident. Respondents engaged D & G Marine Services, Inc., an independent marine ship repair contractor, to repair the damaged equipment. D & G Marine Services hired petitioner and four other ship repairmen, and a foreman, and sent them to the vessel to make the necessary repairs.

On the trial, in accordance with petitioner's demand for a jury trial of all issues, petitioner's employment relationship as well as his status as a crewmember or a ship repairman were submitted with petitioner's consent to a jury on special interrogatories for determination as issues of fact. These issues were decided adversely to petitioner. The jury found that petitioner was "a maritime repairman, not a member of the crew" and "an employee of D & G Marine and not of defendant.

Petitioner's claim for damages against the shipowner, accordingly, was then submitted to the jury pursuant to Section

905(b) of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 905(b)). This too was decided adversely to petitioner.

Petitioner's motions for judgment notwithstanding the verdict, or for a new trial, were denied. The district court found that the testimony and exhibits supported the reasonable conclusion that petitioner was a maritime repairman and not a crewmember, and that the jury was properly instructed as to the law applicable to determining petitioner's status aboard the vessel as well as the law of negligence and causation to be applied in this case.

On appeal the Court of Appeals affirmed the judgment and orders of the district court. It found petitioner's contention that he was a seaman as a matter of law was without merit because it ignored the mutually exclusive remedies provided by the Jones Act, 46 U.S.C. 688 and the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* and disregarded the settled rule that the question whether a person is a seaman or member of the crew is one of fact or a mixed question of fact and law as to which jury exercises as much latitude as it does on the question of negligence.

The Court of Appeals also held that because there were evidentiary facts supporting the finding, petitioner's contention that the evidence did not support a factual finding that petitioner was a ship repairman and not a crewmember was of no avail.

Petitioner's claim that he was an employee of respondent as a matter of law was also found to be without merit. As the District Court had instructed, the employer-employee relationship turned in large part on the right of control and was an issue of fact for jury determination.

Summary of Argument

There are no issues which warrant review by this Court on

certiorari. Petitioner was not prevented from recovering damages from respondent shipowner because of any extension of coverage under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §901 *et seq.*). Petitioner was not permitted to seek damages under the Jones Act (46 U.S.C. §688) and/or the general maritime law because he failed to establish that at the time of his accident he was a member of the vessel's crew and an employee of the respondent shipowner. Petitioner, however, was permitted and did maintain an action against the respondent for damages on the grounds of negligence pursuant to Section 905(b) of the Longshoremen's and Harbor Workers' Compensation Act. Petitioner did not recover because the jury found that petitioner's accident was not caused by any negligence of the respondent shipowner.

The petition is therefore incorrect that petitioner has been left with no remedy whatsoever because the Court below extended coverage under the Longshoremen's and Harbor Workers' Compensation Act to the high seas. Petitioner was permitted and did maintain an action for damages pursuant to Section 905 (b) of the Longshoremen's and Harbor Workers' Compensation Act but was unsuccessful because it was decided adversely to him on the merits.

Review by certiorari is not warranted because of any error by the Court below. Petitioner's difficulty lies in his failure to recognize the distinction which Congress established between members of a vessel's crew and other marine workers who perform services aboard vessels by the enactment of the Longshoremen's and Harbor Workers' Compensation Act. This Court and the lower courts have repeatedly held that one of the tests for determining whether a person is a member of a vessel's crew is whether he is aboard the vessel naturally and primarily as an aid to navigation and whether his work contributes to the function and mission of the vessel and that it is an issue of fact for determination by a jury.

Petitioner confuses the T.T. WILLIAMSBURG with special purpose vessels such as offshore oil drilling rigs, dredges and passenger vessels and claims that merely because he was aboard and performed a service aboard the ship he should be accorded the rights of a member of the vessel's crew.

The T.T. WILLIAMSBURG was a supertanker engaged in the carriage of crude oil. As the Court of Appeals has pointed out petitioner's tasks aboard the T.T. WILLIAMSBURG were repairs to equipment and work necessarily incident to those repairs. (Petition, Appendix p. 4a). Petitioner had no duties which in any way involved navigation of the vessel or the operation of any of the equipment involved in the loading or unloading of the vessel's cargo of crude oil. The submission of petitioner's status as an issue of fact was, therefore, proper and its determination by a jury adversely to petitioner should not be disturbed.

Petitioner's claim for compensation benefits against his employer, D&G Marine Service, was not litigated in the Court below and is therefore not proper subject matter of this petition.

I.

The Decision Below is in Accord with the Decisions of This Court.

The purpose and effect of the Longshoremen's and Harbor Workers' Compensation Act was to limit the benefits of the Jones Act to employees who were either masters or members of the crew of a vessel and exclude those employed in loading, unloading, refitting and repairing of ships. *Norton* v. *Warner Co.*, 321 U.S. 565, 570-71, 64 S.Ct. 747, 88 L.Ed. 931 (1944); *Swanson* v. *Marra Bros., Inc.*, 328 U.S. 1, 66 S.Ct. 869, 90 L.Ed. 1045 (1946); *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U.S. 251, 256-57, 60 S.Ct. 599, 84 L.Ed. 732 (1940).

Where a person not otherwise a member of the ship's crew claims the benefits of the Jones Act the work which he performs aboard the vessel is crucial in determining his status for purposes of recruiting. *Braen* v. *Pfeifer Oil Transp. Co.*, 361 U.S. 129, 131-32, 80 S.Ct. 247, 4 L.Ed. 2d 191 (1959).

This court has repeatedly held that a workers' status as a Jones Act seaman is a question of fact for jury determination and must be sustained if there is any evidence to support the finding. *Texas Co.* v. *Gianfala*, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 775 (1955) memo *per curiam* reversing 222 F.2d 382 (5 Cir. 1955); *Senko* v. *LaCrosse Dredging Corp.*, 352 U.S. 370, 77 S.Ct. 415, 1 L.Ed. 2d 404, (1957).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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